

Assembly Bill No. 2089

Passed the Assembly August 22, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 6203, 6220, 6300, 6301, 6305, and 6340 of the Family Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2089, Quirk. Domestic violence: protective orders.

The Domestic Violence Prevention Act authorizes a judicial officer to issue a protective order after notice and a hearing for the purpose of preventing a recurrence of domestic violence and sexual abuse and ensuring a period of separation of the persons involved, based on an affidavit showing reasonable proof of past abuse. The act defines domestic violence as abuse perpetrated against specified persons, and further defines abuse within that context. Existing law requires, under certain circumstances, the clerk of the court to submit the proof of service of a protective order directly into the Department of Justice Domestic Violation Restraining Order System.

This bill would instead authorize the issuance of a protective order after notice and a hearing for the purpose of preventing acts of domestic violence, abuse, and sexual abuse and ensuring a period of separation of the persons involved. The bill would provide that, in determining whether to grant or deny a protective order, the length of time since the most recent act of abuse is not, by itself, determinative. The bill would also require the trial court, if the court denies a petition to issue a protective order, to provide a brief statement of the reasons for its decision either in writing or on the record.

Existing law authorizes the court to issue a mutual order enjoining the parties from specific acts of abuse if both parties personally appear, each party presents written evidence of abuse or domestic violence, and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

This bill would provide that, for the purposes of these provisions, a court should consider specified provisions relating to dominant aggressors in determining if both parties acted primarily as aggressors.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Every person has a right to be safe and free from violence and abuse in his or her home and intimate relationships.

(b) Domestic violence is a pervasive public safety and public health problem that affects people of all income levels, cultures, religions, ages, ethnic backgrounds, sexual orientations, and neighborhoods.

(c) Domestic violence is not limited to actual and threatened physical acts of violence, but also includes sexual abuse, stalking, psychological and emotional abuse, financial control, property control, and other behaviors by the abuser that are designed to exert coercive control and power over the victim.

(d) There is a positive correlation between domestic violence and child abuse, and children, even when they are not physically assaulted, suffer deep and lasting emotional, health, and behavioral effects from exposure to domestic violence.

(e) Domestic violence victims face significant barriers to safely leaving an abusive relationship, including, but not limited to, a risk of retaliation and escalated violence by the abuser, concerns over the safety and custody of their children, an impending loss of financial support and housing, the responsibility for other household members and pets, and difficulties accessing legal and community systems to seek protection from abuse.

(f) Studies have shown that obtaining a civil protective order against an abuser can increase a victim's safety, decrease a victim's fear of future harm, and improve a victim's overall sense of well being and self-esteem.

(g) Because the issuance of civil protective orders often results in declines in domestic violence, public money spent on protective order intervention produces significant cost savings to society, including decreasing victims' time off from work, property loss, use of health services, and use of community, legal, and criminal justice interventions.

(h) Civil protective orders are most effective when they offer comprehensive relief to address the various barriers victims face when safely separating from an abuser, are specific in their terms, and are consistently enforced.

(i) For these reasons, the effective issuance and enforcement of civil protective orders are of paramount importance in the State of California as a means for promoting safety, reducing violence and abuse, and preventing serious injury and death.

SEC. 2. Section 6203 of the Family Code is amended to read:

6203. (a) For purposes of this act, “abuse” means any of the following:

(1) Intentionally or recklessly to cause or attempt to cause bodily injury.

(2) Sexual assault.

(3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.

(b) Abuse is not limited to the actual infliction of physical injury or assault.

SEC. 3. Section 6220 of the Family Code is amended to read:

6220. The purpose of this division is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence.

SEC. 4. Section 6300 of the Family Code is amended to read:

6300. An order may be issued under this part, with or without notice, to restrain any person for the purpose specified in Section 6220, if an affidavit or testimony and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order.

SEC. 5. Section 6301 of the Family Code is amended to read:

6301. (a) An order under this part may be granted to any person described in Section 6211, including a minor pursuant to subdivision (b) of Section 372 of the Code of Civil Procedure.

(b) The right to petition for relief shall not be denied because the petitioner has vacated the household to avoid abuse, and in the case of a marital relationship, notwithstanding that a petition for dissolution of marriage, for nullity of marriage, or for legal separation of the parties has not been filed.

(c) The length of time since the most recent act of abuse is not, by itself, determinative. The court shall consider the totality of the circumstances in determining whether a petition for relief will be granted or denied.

SEC. 6. Section 6305 of the Family Code is amended to read:

6305. (a) The court shall not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 unless both of the following apply:

(1) Both parties personally appear and each party presents written evidence of abuse or domestic violence.

(2) The court makes detailed findings of fact indicating that both parties acted as a primary aggressor and that neither party acted primarily in self-defense.

(b) For purposes of subdivision (a), in determining if both parties acted primarily as aggressors, the court shall consider the provisions concerning dominant aggressors set forth in paragraph (3) of subdivision (c) of Section 836 of the Penal Code.

SEC. 7. Section 6340 of the Family Code is amended to read:

6340. (a) The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) The court shall, upon denying a petition under this part, provide a brief statement of the reasons for the decision in writing or on the record. A decision stating “denied” is insufficient.

(c) The court may issue an order described in Section 6321 excluding a person from a dwelling if the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party.

Approved _____, 2014

Governor